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NO. _____

THE SUPREME COURT

OF

THE UNITED STATES

THE OCTOBER TERM, 1983

STATE OF TENNESSEE

Plaintiff-Appellee

Vs.

GEORGE VAUGHTER

Defendant-Appellant

ON APPEAL FROM THE COURT OF CRIMINAL

APPEALS OF TENNESSEE

(APPLICATION FOR PERMISSION TO APPEAL
DENIED BY SUPREME COURT OF
TENNESSEE)

JURISDICTIONAL STATEMENT

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IN THE

SUPREME COURT OF THE UNITED STATES

TERM, 1983

NO. _____

STATE OF TENNESSEE

PLAINTIFF-APPELLEE

VS.

GEORGE VAUGHTER

DEFENDANT-APPELLANT

JURISDICTIONAL STATEMENT
APPEAL OF JUDGMENT OF A STATE COURT
IN A CRIMINAL CASE

QUESTIONS FOR APPEAL

Was Appellant, George Vaughter, deprived of his right to a duly licensed and qualified attorney, as counsel guaranteed by Article 1, Sec. 9 of the Tennessee Constitution and the Sixth Amendment and the Fourteenth Amendments to the Constitution

of the United States of America to give him effective assistance in defending himself against a criminal indictment, under which he was forced by the trial court to go to trial, Pro Se, within 7 days after the trial court allowed his paid counsel to withdraw?

Is it a denial of the accused's (appellant's) constitutional right to a fair trial to force him to trial with such expedition as to deprive him of the effective aid and assistance of counsel, thus denying him the due process guaranteed by the Fourteenth Amendment to the Constitution of the United States?

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OFFICIAL OPINIONS OF COURTS BELOW

Judgment Order of the Circuit Court of Rutherford County, Tennessee, entered November 12, 1982 for Jury Verdict rendered November 4, 1982, in Case No. 11058, Misdemeanor Docket.

Judgment entered May 3, 1983 by Court of Criminal Appeals of Tennessee, affirming Judgment of Circuit Court of Rutherford County, Tennessee.

Order entered September 6, 1983 by the Supreme Court of Tennessee denying Application for Permission to Appeal from Judgment of Court of Criminal Appeals of Tennessee.

GROUNDS OF JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES

The accused defendant, George Vaughter, was convicted of simple assault for which he received a sentence of eleven (11) months, twenty-nine (29) days in the Rutherford County Workhouse. The sole issue on appeal is whether the trial court erred in refusing to grant the defendant, George Vaughter, a continuance to procure counsel on November 4, 1982, 7 days after allowing his paid counsel to withdraw from the case on October 28, 1982, and the trial

court on the same day requiring George Vaughter, who has no legal training, to proceed to trial by jury, Pro Se, against the skilled advocacy of the public prosecutor.

The Judgment Order of the Circuit Court of Rutherford County, Tennessee of a jury verdict rendered November 4, 1982, was filed in the Clerk's Office of said Court on November 12, 1982.

From said Judgment, Defendant, George Vaughter, made a timely appeal to the Court of Criminal Appeals of Tennessee, and on May 3, 1983, Judgment was entered in the Office of the Clerk of said Court, affirming the judgment of the Circuit Court of Rutherford County, Tennessee.

From said Judgment of the Court of Criminal Appeals, Defendant, George Vaughter, made timely Application for Permission to Appeal to the Supreme Court of Tennessee, and on September 6, 1983 said

Court denied the Application for Permission to Appeal, thus allowing the judgment of the Circuit Court of Rutherford County, Tennessee, affirmed by the Court of Criminal Appeals of Tennessee to stay in effect.

NOTICE OF APPEAL to the Supreme Court of the United States, was timely filed within 90 days of judgment action of the Supreme Court of Tennessee, on December 5, 1983, pursuant and under the statutory law set forth in 28 U.S.C. Sec. 2101 et seq. and in the rules of the Supreme Court of the United States, as authorized by 28 U.S.C Sec. Sec. 2101 (d). " The time for appeal or application for a writ of certiorari to review the judgment of a State Court in a criminal case shall be as prescribed by rules of the Supreme Court."

George Vaughter's denial by the trial

court of reasonable time and opportunity to obtain counsel after his paid counsel had been allowed to withdraw from the case 7 day before the trial and his being forced to trial Pro Se, is a violation of his constitutional right to assistance of counsel in a criminal case and his right to not be deprived of his liberty without due process of law as is guaranteed to him by the Sixth Amendment and the Fourteenth Amendment to the Constitution of the United States. 28 U.S.C. 1257 (3) also provides jurisdiction of this appeal.

The Sixth Amendment to the Constitution of the United States is as follows:

"RIGHTS OF THE ACCUSED. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been pre-

viously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

The Sixth Amendment has also been held to protect absolutely the right of a defendant to retain counsel of his choice and to be represented in the fullest measure by the person of his choice. Glasser vs. United States, 315 U.S.60, (1942).

In United States Vs. Ash, 413 U. S.300 (1973) It was held by the Court that the "core purpose" of the guarantee of counsel is to assure assistance at trial "when the accused was confronted with both the intricacies of the law and the advocacy of the public prosecutor."

The Fourteenth Amendment, Section 1, of the Constitution of the United States is as follows:

"CITIZENSHIP-DUE PROCESS OF LAW-EQUAL PROTECTION.- All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

The defendant, George Vaughter, had retained, paid counsel and on October 28, 1982, the case was set for trial at 9:00 A. M. and Defendant arrived in

Court late, after 10:00 A. M. and after discussion with his retained attorney, said attorney, Wilkes Coffey, Jr., made a motion to be allowed to withdraw from representing Vaughter in this case and the Court allowed him to withdraw. The Court then re-set the trial date on November 4, 1982, at 9:00 A. M., 7 days later and ordered Mr. Vaughter to have a new attorney and be ready for trial on said date and to ensure his presence, Mr. Vaughter was to have his bond revoked, was to be placed in the custody of the Sheriff 48 hours prior to this trial. Mr. Vaughter did not go to jail 48 hours before trial but he did appear in Court at 9:00 A. M. November 4, 1982 and told the Court he needed additional time to procure counsel, to which request or motion the Court found that the defendant was attempting to impair the orderly disposition

of these proceedings and was in fact toying with the Court in these proceedings. In addition the Court found that the defendant was a land owner, who had been employed in the past, although he was at this time laid-off from his job at the Ford Glass Plant in Nashville, Tennessee, and was not indigent but was capable of hiring an attorney, as he had previously done in this cause, the lawyer who was allowed to withdraw.

Having denied the defendant's motion for a continuance to obtain counsel, on November 4, 1982, the Court made Defendant, George Vaughter, immediately go to trial, representing himself, after being advised by the Court, as to the procedures to be followed and the order of presentation of proof in the case. (Under this theory law schools and legal training would be no longer needed)

George Vaughter was found guilty of simple assault by the jury and punishment affixed at incarceration in the Rutherford County Workhouse for eleven (11) months and twenty-nine (29) days.

From this verdict and judgment George Vaughter appealed to the Court of Criminal Appeals of Tennessee, and in his brief and arguments contended that he was deprived of his rights to counsel at every stage of his case, including trial, as guaranteed by both the Tennessee Constitution and the United States Constitution. The Court of Criminal Appeals made no reference to the Constitutional question and merely affirmed the Trial Court's conclusion that 7 dayswas adequate for an unemployed landowner to have procured the services of counsel that defendant was "attempting to impair the orderly disposition of these proceedings and was in

fact toying with the court."

Defendant then filed an Application For Permission to Appeal in the Supreme Court of Tennessee, wherein he again raised the question of his being deprived of his right to assistance of counsel for his defense in a criminal case, as guaranteed by the Tennessee Constitution and the United States Constitution and the Supreme Court of Tennessee issued an Order stating as follows:

"Upon consideration of the application for permission to appeal and the entire record in this cause, the Court is of the opinion that the application should be denied at the cost of the appellant."

Just as in the famous "Scottsboro Boys" case, Powell v. Alabama, 287 U.S. 45, 53 S. Ct. 55, 77 L. Ed. 158, 84 A.L. R. 527, the following language fits this State of Tennessee vs. George Vaughter

case: The question to the Supreme Court of the United States is whether the denial of the assistance of counsel contravenes the due process clause of the Fourteenth Amendment to the United States Constitution.

Historically and in practice, in our own country it has always included the right to the aid of counsel, when desired and provided by the party asserting the right. The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel,

he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even if he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him.

If in any case, civil or criminal, a state or federal court were arbitrarily to refuse to hear a party by counsel, employed by and appearing for him, it reasonably may not be doubted that such a refusal would be a denial of a hearing and therefore, of due process in the constitutional sense.

In the Powell Vs. Alabama case the Court also held that the failure of the trial court to give defendants reasonable time and opportunity to secure counsel

was a clear denial of due process, as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

George Vaughter is a layman with reasonableintelligence but no skill in the science of law and just as the language above from the Powell Vs. Alabama case sets forth, he lacks both the skill and knowledge and familiarity with the rules of evidence to try his own case against a skilled prosecuting attorney.

In United States vs. Ash, 413 U.S. 300 (1973) the Court held that the"core purpose" of the guarantee of counsel is to assure assistance at trial "when the accused was confronted with both the intricacies of the law and the advocacy of the public prosecutor."

CONCLUSION

Appellant, George Vaughter believes that he was not given a fair trial when

the trial court denied him reasonable time and opportunity to obtain counsel and have said counsel assist him in defending himself and that this conviction judgment set aside and Appellant granted a new trial because his rights under the Constitution of the United States had been violated.

Respectfully submitted,

C. Alex Meacham

C. ALEX MEACHAM, ATTORNEY
FOR GEORGE VAUGHTER

APPENDIX A.

In The Circuit Court for Rutherford County, Tennessee Eighth Judicial District at Murfreesboro

STATE OF TENNESSEE)	November 4, 1982
)	No: 11058 Misdemeanor
)	Docket
VS.)	CHARGE: SIMPLE ASSAULT
)	ASSAULT
)	PLEA: NOT GUILTY
GEORGE VAUGHTER)	JURY VERDIT: SIMPLE ASSAULT
	SENTENCE: 11 months 29 days Workhouse

O R D E R

This cause came on to be heard on this the 4th day of November, 1982, before the Honorable Joseph S. Daniel, Judge, holding the Circuit Court at Murfreesboro, Rutherford County, Tennessee, upon the charge of simple assault. The defendant having pled not guilty a jury of his peers was empaneled for the trial of this charge and upon the defendant's request if found guilty the jury to adjudge the punishment to be imparted in this case. The following jurors were empaneled for the trial of this cause: JEANETTE TUCKER, LAVERGNE J. HARDY, RUCKER W. RAIKES: MARY MARDVICH, ELLIS WRIGHT, JR., PAUL EDWARD WRIGHT, STEPHEN

S. DEES, MARY JO LAMB, ARDEN E. WILSON, KATHY MAE TAYLOR, POLLY E. TAYLOR, JOHN D. WISEMAN, JR.

The defendant represented himself at the trial of these proceedings and was denied a continuance by the Court because of the prior actions of this defendant in on two or more occasions when this case had been set for trial, appearing with counsel, or without counsel, and asking for additional time, the latest event having occurred on Thursday, October 28, 1982, when the defendant was to appear at 9:00 a.m. for the trial of this cause with his retained attorney, Mr. Wilkes Coffey, and did not appear in Court until after 10:00 a.m. and having previously, after discussing with his attorney the trial of this matter without a jury, indicated to his attorney, Mr. Coffey, the desire to trial without jury announced that opposed to trying the case on that day without a jury he now demanded a jury trial, and sought additional witnesses to be subpoenaed After these statements the attorney for the defendant represented that the defendant represented that the defendant had made material misrepresentations about his conseling with his client and that because of those misrepresentations and the

changes in positions that the defendant had taken it was impossible for Attorney Coffey to continue representing Mr. Vaughter in this cause, and upon motion made the defendant's counsel, Wilkes Coffey was allowed to withdraw, based on the testimony presented at that prior hearing. Mr. Vaughter having failed to appear on previous occasions having appeared over an hour and a half late on his scheduled trial date of October 28, 1982, was ordered to appear with his new attorney for jury trial on November 4, 1982, at 9:00 a.m., and to ensure his presence Mr. Vaughter was to have his bond revoked, was to be placed in the custody of the Sherriff forty-eight (48) hours prior to this trial. Mr. Vaughter disobeyed that order of the Court, without notice to the Court appeared on November 4th for trial representing that he needed additional time to procure counsel, to which request the Court found that the defendant was attempting to impair the orderly dispostion of these proceedings and was in fact toying with the Court in these proceedings. In addition the Court found that the defendant was a land owner who had been employed in the past although he was at this time laid-off from his job at the Ford Glass Plant

in Nashville, Tennessee, and was not indigent but was capable of hiring an attorney as he had previously done for his representation in this cause.

Having denied the defendant's motion this cause went to trial, the defendant representing himself after being advised by the Court as to the procedures to be followed and the order of presentation of proof in the case.

After retiring to consider their verdict the jury returned to the Courtroom and announced that they had found the defendant guilty of simple assault and affixed his punishment at incarceration in the Rutherford County Workhouse for eleven (11) months and twenty-nine (29) days. Which sentence and verdict were approved by the Court as the sentence and verdict of the Court, the defendant was sentenced in accordance therewith and delivered into the custody of the Sherriff to begin the service of that sentence. In addition thereto the defendant's bond was set at three thousand (3,000.00) dollars for any appellate remedy should he seek to pursue the same.

ENTER:

JOSEPH S. DANIEL JUDGE

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE NASHVILLE, APRIL 1983 SESSION

STATE OF TENNESSEE, Appellee	No. 82-222-III
	Rutherford County
vs.	Honorable J.S. Daniel, Judge
GEORGE VAUGHTER, Appellant	(Simple Assault)

For the Appellant:	For the Appellee:
C. Alex Meacham Gilsville Family Center Sam Davis Road at Jefferson Pike Smyrna, Tennessee	William M. Leech, Jr. Attorney General of Tennessee Jerry L. Smith Assistant Attorney Tennessee Nashville, Tennessee Guy R. Dotson District Attorney General Murfreesboro, Tennessee

OPINION FILED: May 3, 1983

AFFIRMED

Joe D. Duncan
Judge

O P I N I O N

The defendant, George Vaugher, was convicted of simple assault for which he received a sentence of eleven (11) months, twenty-nine (29) days in the Rutherford County workhouse. The sole issue on appeal is whether the trail court erred in refusing to grant the defendant a continuance to procure counsel and requiring defendant to proceed to trial pro se. We find no error and affirm the judgment below.

We note initially that the defendant has filed neither a transcript of the trial below nor a narrative statement of the evidence, as contemplated by T.R.A.P. 24 (b) and (c). However, the judgment of the trial court explains in sufficient detail what occurred below and the resaons for the trial court's actions. Thus, we are able to review the issue raised.

As explained in the trial court's order, the defendant had retained counsel, and had appeared in court on two (2) or more occasions prior to trial, with or without counsel, to ask for additional time. Specifically, on October 28, 1982, the defendant arrived in court more than one hour late, and having previously agreed to a bench trial, announced that he was now

demanding a jury trial, and wanted additional witnesses subpoenaed. After these statements were made, the defendant's retained attorney received permission to withdraw from the case because of material misrepresentations which the defendant had made to him. Trial was then reset for November 4, 1982, one week later. On November 4, the defendant arrived in court without having obtained counsel, and asked for a continuance, which was denied. The court explained the procedures and the order of proof to the defendant and the case proceeded to trial.

The defendant now contends that seven (7) days was not sufficient time to retain an attorney. This contention has no merit. We deem seven (7) days to have been more than adequate time to enable the defendant to have procured the services of counsel. We note that the trial court found that the defendant was not indigent, and nothing in the record refutes this finding.

The trial court concluded, and we agree, that the defendatn was "attempting to impair the orderly dispostion of these proceedings and was in fact toying with the court..." In Glasgow v. State, 461 S.W. 2d 25 (Tenn. 1970), our Supreme Court affirmed the actions of a trial judge who

required a defendant to proceed pro se in circumstances quite similar to those in the present case. Our Court recently affirmed a trial judge who had required nonindignet defendants to represent themselves after it became apparent that they were "toying with the court." John C. Hooper, Jr., and Janet Diviney v. State, No. 81-194-III (Tenn. Cr. App., Nashville, August 13, 1982). Obviously, if such tactics as were used by the defendant in the present case were sanctioned by law, then a non-indigent defendant could interminably delay or perhaps even avoid a trial. This may not be permitted. We find that the record amply justifies the actions taken by the trial judge.

We find no error, and the judgment is affirmed.

Joe D. Duncan, Judge

CONCUR:

F. Lloyd Tatum, Judge

Allen R. Cornelius, Jr., Judge

APPENDIX C

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

STATE OF TENNESSEE, Plaintiff-Appellee,	)	
vs.	)	Rutherford Criminal
GEORGE VAUGHTER, Defendant-Appellant.	)	C.C.A. No. 82-222-III

ORDER

Upon consideration of the application for permission to appeal and the entire record in this cause, the Court is of the opinion that the application should be and the same hereby is denied at the cost of appellant.

PER CURIAM

APPENDIX D

IN THE SUPREME COURT OF TENNESSEE
OF NASHVILLE

STATE OF TENNESSEE
Plaintiff-Appellee,

vs.

Rutherford Criminal
C.C.A. No.
82-222-III

GEORGE VAUGHTER,
Defendant-Appelant

NOTICE OF APPEAL TO SUPREME COURT
OF THE UNITED STATES

C. ALEX MEACHAM
Attorney for Appelant
Gilsville Family Center
410 Nissan Boulevard
Smyrna, Tennessee 37167

NOTICE OF APPEAL

George Vaughter hereby gives notice that he is taking an appeal to the Supreme Court of the United States to review the judgment of a state court in a criminal case, namely, the Court of Criminal Appeals of Tennessee, filed May 3, 1983, from which judgment an "Application For Permission To Appeal" was filed with The Supreme Court of Tennessee and which Application was denied by The Supreme Court of Tennessee by Order filed on September 6, 1983.

This appeal to the Supreme Court of the United States is taken under the provisions set forth in 28 U.S.C. Section 2101 et seq.

George Vaughter appeals from the judgment of the Court of Criminal Appeals on May 3, 1983, which affirmed the November 4, 1982 (filed November 12, 1982) judgment of the Circuit Court of Rutherford County, Tennessee, wherein George Vaughter was convicted of simple assault and for which he received a sentence of eleven (11) months and twenty-nine (29) days in the Rutherford County Workhouse.

The sole issue on appeal is where the trial court erred and denied George Vaughter

his right guaranteed by the Tennessee Constitution, Article 1, Sec. 9, and the Sixth and Fourteenth Amendments of the Constitution of the United States, to have the assistance of counsel in a criminal case, when said trial court refused to grant Defendant, George Vaughter, a continuance on November 4, 1982, to procure counsel seven days after allowing his paid counsel to withdraw from the case, and when said trial court required George Vaughter, who is a layman with no legal training to proceed on this seventh day to trial by jury pro se.

George Vaughter believes that it is a denial of his constitutional right to a fair trial to force him to trial with such expedition as to deprive him of the effective assistance of counsel, as was stated by the Supreme Court of the United States in White V. Ragen, 324 U.S. 760, 764, 65 S. Ct. 978, 980, 89 L. Ed. 1348;

In Hawk v. Olson, 326 U.S. 271, 276, 66 S.Ct. 116, 90 L. Ed. 61, the Court said that it was a violation of the Fourteenth Amendment to the United States Constitution for a state to force a defendant to trial in such a way as to deprive him of the effective assistance of counsel.

State Ex Rel. Leighton vs. Henderson, Tennessee, Criminal Appeals, Vol. 1, pp. 606 and 607, cited the above cases, White v. Ragen and Hawk v. Olson, and in addition stated as follows: "Recognition of the constitutional right of a defendant to effective counsel stems from Powell v. State of Alabama, 287 U.S. 45, 53 S. Ct.55, 77 L. Ed. 158, wherein the Court spoke of giving 'effective aid in the preparation and trial of the case'. In later cases the Supreme Court has reiterated the constitutional right to effective representation by counsel. In Avery vs. State of Alabama, 308 U.S. 444, 446, 60 S. Ct. 321, 84 L. Ed. 377, the Court stated that the guarantee of the Fourteenth Amendment is not satisfied by a mere formal appointment of competent counsel and that a denial of opportunity to confer, consult with the accused and to prepare his defenses, could convert the appointment into a 'sham'."

Also reference is made to Chandler vs. Fretag, 348 U.S. 3 (1954) and Reynolds vs. Cochran,365 U.S. 525(1961) that held that a defendant must be given a reasonable opportunity to employ and consult with counsel; otherwise the right to be heard by counsel would be of litte worth.

The Fourteenth Amendment to the Constitution of the United States, Section 1 is as follows:

"CITIZENSHIP-DUE PROCESS OF LAW-EQUAL PROTECTION. - All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurdisdiction the equal protection of the laws."

The Sixth Amendment to the Constitution of the United States is as follows:

"RIGHTS OF THE ACCUSED. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

The Sixth Amendment has been held to protect absolutely the right of a defendant to retain counsel of his choice and to be represented in the fullest measure by the person of his choice., Glasser vs. United States, 315 U.S. 60, (1942)
In United States vs. Ash, 413 U.S. 300 (1973), It was held by the Court that the "core purpose" of the guarantee of counsel is to assure assistance at trial "when the accused was confronted with both the intricacies of the law and the advocacy of the public prosecutor."

C. Alex Meacham
Attorney for GEORGE VAUGHTER

I hereby certify that I have this 5th day of December, 1983, delivered a true and exact copy of this Notice of Appeal to the United States Supreme Court to the Attorney General for the State of Tennessee.

C. Alex Meacham
C. Alex Meacham